

## MEMO

TO: Committee on Judiciary

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 842

Date: April 19, 2021

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LD 842 would re-establish parole, which was abolished in Maine with the enactment of the Criminal Code. CLAC understands that the sponsor intends to submit a proposed amendment, so it will address the concept presented by the bill rather than its specific provisions.

Some CLAC members support the idea that people serving sentences should be able, through good behavior and rehabilitation, to demonstrate that they are ready for early release from long sentences for serious crimes. Other members note that the determinate sentencing scheme of the Criminal Code was enacted specifically to eliminate what were seen as the failings of the parole system and that the Criminal Code has served Maine well since its enactment. These members also express concern about the effect on victims of regular parole hearings assessing the potential release of a perpetrator.

Even those in support of bringing back parole acknowledge that it is inconsistent with the original Criminal Code and would require extensive and detailed analysis to craft a parole system that works well in conjunction with the rest of the Code. One question is whether parole could be applied to existing sentences, which CLAC understands is the sponsor's intent. Because parole could be seen as lessening, rather than enhancing a punishment, retroactive application would not violate the ex post facto provision of the constitution. Retroactive application would, however, raise a question as to a violation of the Governor's commutation power, but as an example of the complexity of this undertaking, the fact that the Executive Branch, rather than a court, was granting parole might avoid the separation of powers problem.

Another issue for consideration is the interplay between parole and probation. Many people serving long sentences face a period of probation or supervised release when their sentence of imprisonment ends. It is unclear how release on parole would fit within the existing model of split sentences or sentences followed by supervised release.

Finally, CLAC members noted that a functioning parole system will require extensive resources in terms of both Parole Board members and staff to handle the volume of parole requests contemplated by the bill.

Given these issues, a number of CLAC members suggest that a qualified study group should be convened to study the issue and craft a final proposal.